

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SKYHOOK WIRELESS, INC.,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

CIVIL ACTION
NO. 10-cv-11571-RWZ

GOOGLE INC.'S MOTION FOR SUMMARY JUDGMENT OF INDEFINITENESS

Defendant and Counterclaim-Plaintiff Google Inc. ("Google"), by its undersigned attorneys, hereby moves this Court for an order granting Summary Judgment of Indefiniteness in Google's favor. This Motion is made pursuant to Federal Rule of Civil Procedure 56 on the ground that each of Plaintiff Skyhook Wireless Inc.'s ("Skyhook") asserted patents fail to satisfy the definiteness requirement of 35 U.S.C. § 112, ¶ 2, and are accordingly invalid.

Like claim construction, definiteness is an issue of law that can be resolved by the Court. *Personalized Media Commc'ns, LLC v. Int'l Trade Comm'n*, 161 F.3d 696, 705 (Fed. Cir. 1998) ("A determination of claim indefiniteness is a legal conclusion that is drawn from the court's performance of its duty as the construer of patent claims."). Accordingly, it is appropriate at this stage in the litigation to resolve Google's indefiniteness assertions. Should the Court agree with Google that the asserted patents-in-suit are indefinite, and thus invalid, it need not construe the claim terms in dispute. In the event, however, the Court concludes the terms of one or more patent warrant construction, Google has proposed constructions in its brief, filed herewith, for each of the claim terms in dispute.

Google certifies counsel for the parties have conferred and attempted in good faith to resolve or narrow the issues. Specifically, counsel for the parties have spoken on numerous occasions, and at length, exchanged correspondence, and provided the disclosures set forth in the Joint Statement (dkt. 18, filed December 7, 2010) concerning the construction of the disputed claim terms. During those discussions, Google has repeatedly asserted its position that the patents-in-suit are invalid, identified the particular limitations it believes are indefinite, and has advised Skyhook of its general reasoning and supporting evidence. Skyhook has advised Google of its position that each asserted claim is definite and valid.

The grounds in support of this Motion are set forth in Google's Memorandum of Law in Support of Motion for Summary Judgment of Indefiniteness and, in the Alternative, Opening Claim Construction Brief, which is filed herewith and incorporated herein by reference.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Google respectfully submits that oral argument may assist the Court in determining whether the patents-in-suit are invalid, and accordingly requests the Court to consider Google's Motion for Summary Judgment of Indefiniteness during the claim construction hearing, scheduled for November 9, 2011 at 9:00 a.m.

Dated: September 14, 2011

Respectfully Submitted,
Google Inc.,

By its attorneys,

/s/ Susan Baker Manning

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on September 14, 2010.

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